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Internal Revenue Code Section 179D May Provide Financial Benefit to Governments

In the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code, which provides a deduction for the costs of installing certain energy efficient building systems in commercial buildings. The deduction may be up to \$1.80 per square foot for improving energy efficiency in an existing building or designing energy efficiency into a new building. The types of energy efficient improvements which qualify may include the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope.

Since governments are not taxpayers, they can not take direct advantage of this deduction. However, Congress wanted to provide incentives to governments to invest in energy efficiency in both existing and new buildings. So Congress allows a government building owner to allocate the 179D deduction to one or more designers (for example, architects or engineers). The expectation was that governments would achieve benefits in reduced design fees.

Governments now have two opportunities with respect to the 179D deduction. First, in contracting with architects or engineers for design of new buildings which will include energy efficient elements, the government could negotiate a reduced fee with the architect or engineer in consideration of the assignment of the 179D deduction. Second, with respect to building projects placed in service within the last 3 years (or possibly earlier) where the 179D deduction has not been allocated, governments could allocate the 179D deduction to the architect or engineer which designed energy efficient elements of such buildings and can receive in exchange for a negotiated payment from the architect or engineer a portion of the tax benefit of the 179D deduction.

For example, if a government built a new 100,000 square foot building which was placed in service in 2010 the maximum possible deduction may be \$180,000. For an architect or engineer in the 35% federal tax bracket, this means a tax benefit of \$63,000. So the government owner may wish to allocate the 179D deduction to the architect or engineer in exchange for a payment of some portion of that \$63,000 benefit.

If you have any questions regarding this article or its possible impact on your activities and operations, please contact your Sherman & Howard attorney or one of the [attorneys](#) in our [Public Finance Group](#).

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